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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

NATIONAL SEATING & MOBILITY, INC.,

Plaintiff,

vs.

MICHAEL PARRY and DOES 1 through 20;
inclusive,

Defendants.

MICHAEL PARRY, individually and on behalf
of all others similarly situated,

Cross-Complainant,

vs.

NATIONAL SEATING & MOBILITY, INC.,

Cross-Defendant.

Case No.: 3:10-cv-02782-JSW

**~~PROPOSED~~ ORDER (1) PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT; (2) PROVISIONALLY
CERTIFYING SETTLEMENT CLASS; (3)
APPROVING CLASS NOTICE, CLAIM
FORM AND REQUEST FOR EXCLUSION
PROCEDURE; (4) DIRECTING
DISSEMINATION OF CLASS NOTICE; AND
(5) SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT
AS MODIFIED HEREIN**

Date: ~~May 17, 2013~~ June 14, 2013
Time: 9:00 A.M.
Courtroom: 11, 19th Floor
Judge: The Hon. Jeffrey S. White

Action Filed: March 3, 2010

The parties to the above-captioned civil actions ("Actions"), Plaintiff and Cross-Claim
Defendant NATIONAL SEATING & MOBILITY, INC. ("NSM") and Defendant and Cross-Claim
Plaintiff Michael Parry, ("Representative Plaintiff") individually and on behalf of others similarly

1 situated (“Plaintiffs”) have agreed - subject to final approval following notice to the proposed
 2 Settlement Class - to settle the Actions upon the terms and conditions set forth in the Joint
 3 Stipulation of Settlement and Release Between Plaintiffs and Defendant (“Settlement”), which was
 4 filed with the Court in connection with the present motion by Plaintiffs for an Order (1)
 5 Preliminarily Approving Class Action Settlement; (2) Provisionally Certifying Settlement Class; (3)
 6 Approving Class Pre-Notice and Notice, Claim Form and Request for Exclusion Procedure; (4)
 7 Directing Dissemination of Class Notice; and (5) Setting Hearing for Final Approval of the
 8 Settlement (“Plaintiffs’ Motion”).

9 Plaintiffs’ Motion is unopposed by NSM and was submitted to this Court for review and
 10 approval on April 26, 2013. After considering Plaintiffs’ Motion, the Settlement Agreement, the
 11 record and proceedings herein, the Court finds, concludes, and hereby orders as follows:

- 12 1. The Settlement is preliminarily approved as fair, reasonable, and adequate.
- 13 2. For purposes of determining whether the terms of the proposed Settlement should be
 14 finally approved as fair, reasonable and adequate, the following Class is conditionally certified, for
 15 purposes of this Settlement only:

16 (a) *Class:* This class includes all Rehabilitation Technology Suppliers who are or
 17 were employed by National Seating & Mobility, Inc. who had an Employment
 18 Agreement which dictated payment including commissions to be based on
 19 “Gross Base Office Profits” or like language for work performed at any time
 20 between February 5, 2004 through the Date of Preliminary Approval of the
 Settlement, and whose Employment Agreement has a Tennessee choice of law
 provision.

21 3. Plaintiff Michael Parry is appointed as representative of the Settlement Class and the
 22 following Plaintiffs’ counsel are designated as counsel for the Settlement Class (“Class Counsel”):
 23 Kershaw Cutter & Ratnoff, LLP and Meuser Law Group, Inc.

24 4. The Court also appoints Class Action Administration, Inc., 10875 Dover Street,
 25 Suite 300, Westminster, CO 80021 (“CAA”) to act as Settlement Administrator to assist the parties
 26 in performing the following duties: (a) using the data provided by NSM to prepare the Claim Forms
 27 with the information for each Class Member; (b) mailing the Notice and accompanying Forms to
 28 Class Members; (c) tracking and follow-up on returned Forms and Requests to be Excluded; (d)

1 notifying the Parties of timely and untimely claims; (e) calculating the amounts due to each Class
 2 Member pursuant to the Settlement; (f) notifying the Parties of and making determinations of any
 3 disputes regarding claims by the Class Members; and (g) reporting to the Parties and the Court as
 4 required or appropriate.

5 5. Notice to the Class shall be provided in the manner described in the Settlement
 6 Agreement. The approved form of Class Notice is attached as Exhibits A-C to the Declaration of
 7 John R. Parker, Jr.

8 6. The Court preliminarily finds that the dissemination of the Notice under the terms
 9 provided for in this Order constitutes the best notice practicable under the circumstances, and is due
 10 and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the
 11 requirements of due process, the Federal Rules of Civil Procedure, and all other applicable laws.
 12 Prior to the final settlement approval hearing, a declaration shall be filed with the Court confirming
 13 that Notice was given in accordance with the terms of this Order.

14 7. A hearing shall be held on October 25, 2013, at ^{9:00}~~10:00~~ a.m., in
 15 Courtroom 11 of the United States District Court for the Northern District of California ("Final
 16 Approval Hearing") to determine whether the proposed Settlement should be finally approved as
 17 fair, reasonable, and adequate, and whether a Final Order and Judgment approving the Settlement
 18 and dismissing all claims asserted in the Actions on the merits, with prejudice and without leave to
 19 amend, should be entered. Plaintiff's ~~the~~ request for incentive awards and the request for an award
 20 of attorneys' fees, costs and expenses shall be served and filed with the Court within 45 days of the
 21 entry of this Order. Plaintiff must ensure class members receive proper notice of that motion, as set forth below.
 22 Plaintiff's briefs and papers in support of final approval shall be served and filed
 23 with the Court by September 20, 2013. The Final Approval Hearing described in this
 24 paragraph may be postponed, adjourned, transferred or continued by the Court without further notice
 25 to the Settlement Class. Upon motion of any party, the Court may, for good cause, extend any of the
 26 deadlines set forth in this Order without further notice to the Settlement Class.

27 8. Objections to the proposed Settlement shall be heard, and the Court shall consider any
 28 papers or briefs submitted in support of said objections, in its discretion, only if they comply with
 the objection procedures set forth in the Notice. Specifically, members of the Class who wish to
 PLAINTIFF MUST ENSURE CLASS MEMBERS RECEIVE NOTICE OF THE MOTION FOR
 ATTORNEYS' FEES AND INCENTIVE AWARD. See In re Mercury Interactive Sec. Litig., 618 F.3d
 988, 993-95 (9th Cir. 2010); Fed. R. Civ. P. 23(h)₃

object to the Settlement must file any such objection with the Clerk of the Court not later than August 23*, 2013, and provide a copy of the objection to Class Counsel and to counsel for NSM as set forth in the Settlement Agreement and Notice. Any objection must: (1) contain the objector's name and address; (2) be signed by the objector; (3) include reference to the matter of *Nationanl Seating & Mobility, Inc., Plaintiff vs. Michael Parry and DOES 1 through 20, Defendants and related cross complaint, Case No. 3:10-cv-02782-JSW in the United States District Court, Northern District of California*; (4) include a statement of whether the objector intends to appear at the Final Approval Hearing; and (5) provide an explanation of the basis for the objection. Any Class Member who does not so request to object waives the right to do so in the future, and shall be forever barred from making any objection to the proposed Settlement by appearing at the Final Approval Hearing, appeal, collateral attack, or otherwise.

9. All requests for exclusion from the Settlement Class must be in writing and must comply with the provisions of and contain the information requested as set forth in the Settlement Agreement and Notice and, to be effective, must be submitted no later than August 23*, 2013. Class Counsel, with the cooperation of counsel for NSM, is responsible for reporting to the Court at the Final Approval Hearing regarding the number and status of any requests for exclusion. All persons who file timely and valid requests for exclusion in the manner set forth in the Notice shall have no rights under the Settlement, and shall not share in the distribution of Settlement funds, but shall not be bound by the Settlement Agreement or any final judgment and order of dismissal entered pursuant to the Settlement Agreement. All Class Members who do not request exclusion in the manner set forth in the Notice shall be bound by any final judgment and order of dismissal entered pursuant to the Settlement Agreement, shall be barred and enjoined, now and in the future, from asserting any and all California law wage and hour claims, as defined in the Settlement Agreement, against the Released Parties, as defined in the Settlement Agreement, and any such Settlement Class Member shall be conclusively deemed to have released any and all such California law wage and hour claims.

10. The certification of the Settlement Class shall be for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of NSM that this Action, or any

* The Court has set this deadline to account for the need to ensure class members receive notice of the motion for attorneys' fees and incentive award.

1 other proposed or certified class action is appropriate for class treatment pursuant to Federal Rule of
2 Civil Procedure 23 or any other similar class action statute or rule. The certification is without
3 prejudice to the rights of NSM to: (a) seek decertification or modification of the Settlement Class as
4 certified should the settlement not be approved or implemented for any reason; or (b) terminate the
5 proposed Settlement as provided for in the Settlement Agreement.

6 11. The proposed Settlement is hereby preliminarily approved, but is not to be deemed an
7 admission of liability or fault by NSM or by any other person, or a finding of the validity of any
8 claims asserted in this litigation, or of any wrongdoing or of any violation of law by NSM. The
9 proposed Settlement is not a concession and shall not be used as an admission of any fault or
10 omission by NSM or any other person or entity. Neither the terms of the Settlement nor any related
11 document shall be offered or received in evidence in any civil, criminal, or administrative action or
12 proceeding, other than such proceedings which may be necessary to consummate or enforce the
13 terms of the Settlement, except that NSM may file this Order in any action that may be brought
14 against it in order to support a defense or counterclaim based on principles of res judicata, collateral
15 estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim
16 preclusion or issue preclusion or similar defense or counterclaim.

17 12. In the event that the proposed Settlement as provided in the Settlement Agreement is
18 not approved by the Court, or for any reason the parties fail to obtain a Final Approval as
19 contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its
20 terms, then the Settlement Agreement and actions taken in connection therewith, including but not
21 limited to entry of this Order, shall become null and void and of no further force and effect, and shall
22 not be used or referred to for any purposes whatsoever. In such event, the Settlement Agreement
23 and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to the
24 rights of any and all parties thereto, who shall be restored to their respective positions prior to
25 execution of the Settlement Agreement.

26 13. It is hereby ordered that all proceedings in this Action shall be stayed, except such
27 actions as may be necessary to implement the Settlement Agreement and this Order, pending further
28 proceedings in connection with the effectuation of the proposed Settlement.

14. In sum, the dates for performance are as follows:

<p>May 16, 2013</p> <p>June 5, 2013 (20 days after Preliminary Approval):</p> <p>June 20, 2013 (35 days after Preliminary Approval):</p> <p>July 1, 2013 ** (45 days after Preliminary Approval):</p> <p>July 1, 2013 ** (45 days after Preliminary Approval):</p> <p>August 23, 2013 (45 days after mailing of Class Notice):</p> <p>August 23, 2013 (45 days after mailing of Class Notice):</p> <p>September 20, 2013 (at least 30 days before final approval hearing): See N.D. Civ. L.R. 7-2(a).</p> <p>October 4, 2013 (10 days before final approval hearing): See N.D. Civ. L.R. 7-3(a).</p> <p>September 20, 2013 (35 days before final approval hearing):</p> <p>October 11, 2013 (5 days before final approval hearing): See N.D. Civ. L.R. 7-3(c).</p>	<p>Preliminary Approval of Settlement.</p> <p>Deadline for NSM to provide CAA as the Settlement Administrator a list of all provisional class members and their last known addresses, if practicable, and information regarding the length of service for each class member and their classifications for “commission earned periods” and “draw periods”.</p> <p>NSM shall mail the Pre-Notice to all class members who are active employees of NSM.</p> <p>The Settlement Administrator shall mail Notice and accompanying Form to all class members.</p> <p>Plaintiffs to file request for service payments and the request for an award of attorneys' fees, costs and expenses.</p> <p>Deadline for written objections to the Settlement or notice of intention to appear and object at Final Approval Hearing.</p> <p>Deadline for submission of request to be excluded from the Settlement.</p> <p>Deadline for parties to file and serve joint motion for final approval of Settlement.</p> <p>Deadline for filing of any written opposition to the joint motion for final approval of Settlement and to Plaintiffs' request for service payments and for an award of attorneys' fees, costs and expenses.</p> <p>Deadline for Settlement Administrator to submit declaration of compliance, reporting on the due diligence undertaken with regard to the mailing of Notice and the number of opt-out class members.</p> <p>Deadline for filing replies in support of final approval or application for fees, costs, and incentive award.</p>
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** The July 1, 2013 deadline takes into account that the 45th day from the date of this Order is a Sunday.

October 25, 2013 9:00 a.m. Final approval hearing.

_____, 2014 Deadline for Settlement Administrator to mail
(30 days after Judgment is Final): settlement fund checks to class members.
The Court shall not set a specific date, because the Court cannot anticipate whether an appeal will be filed.

IT IS SO ORDERED:

Date: May 16, 2013



JEFFREY S. WHITE
UNITED STATES DISTRICT COURT JUDGE

The Court HEREBY ORDERS that the parties provide the Court with a status of NSM's claims against Parry, and whether a case management conference needs to be scheduled for those claims. The status report shall be due by May 24, 2013.